



LAW COMMISSION OF INDIA

TWENTIETH REPORT



(REPORT ON THE LAW OF HIRE-PURCHASE)

MAY, 1961

GOVERNMENT OF INDIA MINISTRY OF LAW

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REPORT ON HIRE-PURCHASE

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No. F.1(2)/59-L.C. Pt. II.
CHAIRMAN,
LAW COMMISSION.
New Delhi—3,
June 19th, 1961.

Shri Asoke Kumar Sen,
Minister of Law,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Twentieth report of the Law Commission on the law of Hire-purchase.

2. The Law Commission had recommended in its Eighth report (Report on the Sale of Goods Act) that there should be a separate enactment regulating hire-purchase transactions. Agreeably to this recommendation, I took up the subject, and had a draft Report prepared. That was considered by the Commission at its meeting held on the 5th and 6th February, 1960, and revised in the light of the decisions taken. The revised draft was circulated for opinion to the State Governments, High Courts, Bar Associations, Chambers of Commerce and other bodies and persons interested in the subject. After the receipt of their comments, the Commission decided to hear oral representations. On the 14th and 15th October, 1960, three witnesses were examined, and a further opportunity was given to the public to make representations, oral and written. In response to this, further written comments were received, but no witnesses appeared before us. The draft Report was finally considered by the Commission at its meeting held on the 6th and 7th January, 1961, and revised and finalised in the light of the written representations and oral evidence given before us.

The Report has been drawn up in accordance with the decisions taken at the meeting.

3. The Commission desires to express its appreciation of the services rendered by Shri D. Basu, Joint Secretary, and by Shri P. M. Bakshi, Deputy Draftsman, in the preparation of the Bill and the Notes.

Yours sincerely,
T. L. VENKATARAMA AIYAR.

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REPORT ON THE LAW OF HIRE-PURCHASE

1. The Law Commission has, in its Report on the Sale of Goods Act,¹ observed as follows:—

Need for
legislation—
recommendation
in the
Eighth Re-
port.

“There is no provision in the Act regulating a transaction of hire-purchase, which is also a method of selling goods. It is a transaction of hire at the inception with an option to purchase.

“In the English Sale of Goods Act of 1893, there was no provision for such a transaction. Hence provision was made by a separate Act, namely, the Hire-Purchase Act of 1938 (1 and 2 Geo. 6, c. 53), with a view to affording protection to the buyer of the goods on hire-purchase, or on similar terms, against certain abuses which had become apparent in the practice of hire-purchase trading. The Act has been supplemented by the Hire-Purchase Act, 1954 (2 and 3 Eliz. 2, c. 51).

“In our opinion, it is desirable that a separate Act on the lines of the *English Hire-Purchase Acts* and other similar laws should be enacted in India to regulate hire-purchase transactions. The Commission will make its recommendations in this connection in a separate report.”

This Report has been prepared in accordance with the above suggestion.

2. The hire-purchase agreement represents a fairly modern phase in the development of commerce. In England when the Sale of Goods Act, 1893, was enacted, it had not acquired such importance as to call for special legislation, though it was fairly well-known in the world of business. But subsequent thereto, as a result, it is stated, of large-scale production of goods and competition among the manufacturers to find a market for them, there had been an enormous expansion of business on the hire-purchase system, and attendant thereon, there appeared certain evils, which are brought out in great detail in the proceedings in Parliament relating to the enactment of the Hire-Purchase Act, 1938 (1 and 2 Geo. 6, c. 53) known as Miss Wilkinson's Act. Thus, a hirer who wanted to terminate the agreement, could do so only on payment of a minimum amount, which in many cases was penal and exorbitant. The hire-purchase agreements conferred on the owner power to seize the goods, when default occurred in the payment of any instalment, and this power was often exercised, even after substantial payments had been made by the hirer, with the result that the latter forfeited all the payments made and lost

Legislation
in England.

¹Eighth Report, page 4, para. 12.

relating to hire-purchase agreements, but only to amend it.

5. The Hire-purchase Act, 1938, applies not only to transactions of hire-purchase but also to certain sales on credit. One of the questions which we had to determine was, whether the present legislation should be limited to hire-purchase agreements, or whether it should extend also to credit-sale agreements. In England, the term hire-purchase is applied to denote not only transactions which are hire-purchases strictly and properly so-called, but also credit-sale agreements, that is, agreements to purchase goods under which price is to be paid by instalments and the title is to pass only when all the instalments are paid.¹ There is, in law, a well-defined distinction between agreements of hire-purchase and credit sales. A hire-purchase agreement is a form of bailment. The hirer is given the right to purchase the goods on certain conditions. That, however, is an option, not an obligation to purchase. The hirer may elect to purchase the goods, and when he does that and fulfils all the conditions prescribed in the agreement, the title to the goods will pass to him. But he may elect not to do so, and in that event he is entitled to return the goods and terminate the agreement in the manner provided therein. In an agreement of credit-sale on the other hand, the purchaser has no right to terminate it at his option. If he did that, he would be in breach of the contract and would be liable, in law, in damages, *vide Lee v. Butler*;² *Helby v. Matthews*;³ *Auto Supply Co. v. Raghunath Chetti*.⁴ In Halsbury's Laws of England, the distinction between hire-purchases and credit-sales is stated to be that "under the latter type of contract there is a binding obligation on the hirer to buy and the hirer can therefore pass a good title to a purchaser or pledgee dealing with him in good faith and without notice of the rights of the true owner, whereas in the case of a contract which merely confers an option to purchase there is no binding obligation on the hirer to buy, and a purchaser or pledgee can obtain no better title than the hirer had, except in the case of a sale in market overt".⁵

Hire-purchase agreements and credit-sale contracts being thus fundamentally different in their character and in their legal incidents, the question is whether the present legislation should apply also to the latter. The argument in support of their inclusion is, that the two classes of agreements have so many features in common, that it may not always be possible to

¹Halsbury's Laws of England, 3rd edition, Volume 19, page 510, para. 823.

²(1893) 2 Q.B.D. 318.

³(1895) A.C. 471.

⁴I.L.R. 52 Mad. 829

⁵Halsbury's Laws of England, 3rd edition, Volume 19, pages 510-511, para. 823.

distinguish between them, that if these transactions are excluded from the operation of this legislation, it will be easy for the owner to circumvent it by disguising hire-purchase agreements under the trappings of credit-sale agreements, and the legislation will be bereft of much of its utility. That, no doubt, is a result which must be avoided. But the question to be considered is whether, for achieving this object, it is necessary to bring credit-sale agreements within the purview of this legislation. There should be no difficulty in distinguishing an agreement of hire-purchase from a credit-sale agreement, when it is understood that the cardinal point of distinction between the two is whether the so-called hirer or purchaser has an option to purchase or not. If he has not such an option, then it can only be a credit-sale agreement. The fact that the price is payable by instalments or that the title is to pass after all of them are paid, are matters on which the parties are free to enter into their own agreement, *vide* section 19(1) and section 32 of the Sale of Goods Act, 1930, and cannot affect the character of the transaction as an agreement of sale. Nor is it material how the parties label the transaction or whether the instalments to be paid are described as hire or rent or as price. It is the substance of the transaction that determines its true character, and if on a reading of the agreement it is found that the purchaser has no option to withdraw from the contract, then it can only be construed as a credit-sale agreement.

Credit-sale agreements are now governed by the Sale of Goods Act, 1930, which is a self-contained code defining the rights of parties, and the inclusion of these agreements within the purview of this enactment must lead to complications and result in confusion. It may be mentioned that though credit-sale agreements are within the purview of the English Hire-Purchase Act, 1938, the only sections that are made applicable to them are sections 3, 5(e) and 6. Section 3 prescribes the formalities to be complied with when a credit-sale agreement is entered into; section 5(e) provides that the owner is liable for the acts or defaults of his agents in connection with the formation or conclusion of a credit-sale agreement; and section 6 imposes, on an owner, an obligation to supply to the other party, on demand, a copy of the agreement and a statement of particulars relating thereto. Thus they all relate to matters of form and not of substantive rights of the parties under the agreement, which will be governed by the Sale of Goods Act, 1893. It is true that in some of the Australian States the provisions of the Hire-Purchase Acts applicable to credit-sale agreements refer not only to formalities but also to substantive rights. But even among these States, the law varies "owing", it has been said, "to the divergent opinion of

Governments on the control which should be exercised over this type of contract".¹ The conditions of business in this country do not seem to require any special control over credit-sale agreements, the provisions of the Contract Act, 1872, and the Sale of Goods Act, 1930, being ample to give relief to purchasers under credit-sale agreements; and in this respect we have preferred to follow the precedent of the English Hire-Purchase Acts, 1938 and 1954, to the enactments in some of the Australian States. While circulating the draft Bill for opinion, we had sent a questionnaire in which one of the questions was whether credit-sale agreements should be included within legislation. The opinion is overwhelming against such inclusion. We have therefore decided to exclude them from this legislation. If it should become necessary at any time, owing to the exigencies of business, to enact legislation for granting relief to purchasers under credit-sale agreements, that should, in our view, be more appropriately done, by inserting special provisions in the Sale of Goods Act, 1930.

There is, however, one aspect of the matter which may be cleared up. Some of the hire-purchase agreements contain a provision that on payment of all the instalments the hirer might exercise his option to purchase the goods, while others merely provide that on payment of the instalments the title will automatically vest in the hirer. A doubt was expressed whether the latter kinds of agreements could be classed as hire-purchase agreements, because on payment of the last instalment title will pass to the hirer, without his having to exercise any option. But the essence of a hire-purchase agreement is the option on the part of the hirer to purchase the goods, that is, the right to withdraw from the transaction at any time, and where that option is granted to the hirer, it would not affect the character of the transaction as a hire-purchase agreement, whether the title is to vest automatically on the payment of all the instalments or whether the hirer has to express his intention to become the owner. With a view to clarifying the position, we have defined hire-purchase agreements so as to cover all agreements under which the hirer takes the goods on bailment and under which he could either purchase the goods or terminate the agreement, at his option, whether the title is to pass to him on payment of the instalments and fulfilment of the conditions automatically or on the further exercise of option by the hirer.

6. We should refer to another point on which the present draft differs from the English Act. The Hire-Purchase Act, 1938, as amended in 1954, does not apply to agreements in which the hire-purchase price exceeds, in the case of live-stock, £1,000, and, in other

Maximum
limit for
application
of the Act.

¹See "Australian Mercantile Law", by Yorston and Fortescue, 9th Edn., page 196.

cases, £300. We have considered the question whether we should likewise impose a maximum pecuniary limit on the transactions to which this legislation should apply. There is, among the opinions received, some support for the view that the Act should be restricted in its application to hire-purchase agreements below a certain pecuniary limit. But as against this, it has been urged that this country has just entered on an era of industrial expansion, that hire-purchase transactions would greatly facilitate such expansion, and that therefore we should not impose any such restriction. The main ground on which the demand for prescribing pecuniary limit was based had reference to the provision in the draft which was circulated that the owner could not seize the goods in case of default, when one-third of the hire-purchase amount had been paid. It was said that this provision would act harshly on the owner, when high-priced goods such as trucks and lorries were given on hire-purchase agreements. This objection loses much of its force, now that we have provided¹ that the owner cannot exercise his right to seize the goods otherwise than through court where the hire-purchase price exceeds Rs. 15,000 when three-fourths thereof had been paid, and where it is Rs. 15,000 or less, when half of it had been paid. This provision will give, in our opinion, sufficient protection to the owner. To bar the application of the Act altogether when the hire-purchase price exceeds a limit would, in our opinion, impede the expansion of industrialisation, and we have accordingly decided that the legislation should apply to all hire-purchase agreements, whatever the amount payable thereunder.

Assignment
by hirer.

7. The Hire-Purchase Act, 1938, is silent on the question of assignment of hire-purchase agreements, which will therefore be governed by the Common Law. According to that law, in a contract of bailment pure and simple, the bailee gets no property in the goods, and he has therefore no right to transfer them by sale or pledge. But a person who has an option to purchase goods, has a kind of proprietary interest therein, and that is capable, in law, of being transferred, unless there is a prohibition against it in the agreement.

As a hire-purchase agreement is a composite transaction involving elements both of bailment and of sale, the validity of the assignment of the rights thereunder or of the goods comprised therein must be judged on the principles stated above. It has accordingly been held that when the hirer assigns his rights under a hire-purchase agreement, the assignee succeeds to all his rights and his obligations, *vide Whitley v. Hilt*,² and that that is the position even though there is a restriction on the right to assign the goods, *vide Belsize Motor Co. v. Cox*,³ but that where there is in

¹See Appendix I, clause 18.

²(1918) 2 K.B. 808.

³(1914) 1 K.B. 244.

the agreement a prohibition against assignment thereof, a transfer of the goods by the hirer conferred no rights on the assignee, *vide Trust Commercial Ltd. v. Parkway Motors Ltd.*¹ In the draft which was circulated for opinion it was proposed that, notwithstanding any restriction contained in the agreement, a third person who obtains *bona fide* a transfer of the goods from the hirer without any notice of the hire-purchase agreement should have the same rights and be subject to the same obligations as the hirer, and that should be without prejudice to the rights of the owner as against the hirer and his surety. But as there was some opposition to this proposal, we decided, on reconsideration, to drop it. The result is that, under this legislation as under the English Act, when there is an assignment of a hire-purchase agreement, the rights of the parties will be governed by the general law. To this, however, we have provided one exception,² departing, in that particular, from the English Act. It is, that the hirer could assign the agreement, notwithstanding any prohibition contained therein, if the owner unreasonably withholds his consent thereto. Such a provision is to be found in the Australian Acts, and is calculated to do justice. It might happen that a hirer who had made considerable payments under a hire-purchase agreement may not be in a position to go on with it, either because he is in financial difficulties or because he wants to close down his business. In such a case if he can assign the agreement, he will have a chance of realizing at least part of his investments. But if there is a prohibition against assignment in the agreement, and that is to be strictly enforced, he would have no option but to surrender the goods and lose all the payments made. A provision such as the one now proposed to be inserted would give relief to the hirer in such cases, while the owner will not be prejudiced thereby as he can insist on all the amounts due to him being paid before the assignment is recognised, and further, neither the hirer nor the surety is discharged from their obligations to him under the agreement by reason of the assignment.

8. An allied question which calls for consideration is as to the rights of parties when the hirer is adjudged insolvent. According to the law of England, goods which are in the possession of the insolvent in trade or business on the date of the petition with the consent of the true owner and under such circumstances that he is the reputed owner thereof, would vest in the Official Receiver and be divisible among the creditors. Under this doctrine, hire-purchase goods will also pass to the Official Receiver, provided, of course, the other conditions are satisfied. Section 16 of the Hire-Purchase Act, 1938, provides that where the Court postpones the operation of an order for the specific

Insolvency
of hirer.

¹(1955) 2 A.E.R. 557.

²See Appendix I, clause 11.

delivery of goods under the Act, then the goods shall not be treated as being in the possession of the insolvent with the consent of the true owner. Subject to this exception, the general law as to reputed ownership will apply to hire-purchase goods in the possession of the hirer. The result is that the owner loses his property, his only right being to prove in insolvency for the value of the goods. *Vide, Ex parte Haviside, Re Button*.¹

9. Now, the doctrine of reputed ownership is a serious invasion on the rights of an owner, and the tendency of the Courts in England has been to limit its application within narrow limits. A series of exceptions have been recognised on the ground that it is the well-known custom of a particular trade that the goods in the possession of the trader are taken by him under a hire-purchase agreement, and that that excludes reputation of ownership in the hirer. Thus, when the proprietor of a hotel was adjudged insolvent the furniture therein was held not to have passed to the trustee-in-bankruptcy, as it was a notorious custom of the trade that hotels were furnished on hire-purchase system, and similar decisions have been given in respect of several other trades.² An attempt to get out of the mischief of the reputed ownership doctrine has sometimes been made in England, by inserting a clause in the agreement, that the consent of the owner to possession by the hirer will stand revoked when he commits an act of insolvency. If this provision is valid, then the goods would cease to be in the possession of the hirer with the consent of the owner and the reputed ownership clause will not apply. The validity of this clause, however, has not been tested in Courts.

10. The doctrine of reputed ownership forms part of the law of this country, and, therefore, goods in the possession of a hirer, taken on a hire-purchase agreement, will vest in his assignee in bankruptcy. The question is, whether the law as to reputed ownership requires to be changed, in so far as it applies to goods which are covered by hire-purchase agreements. In our opinion, it does. It is common knowledge that having regard to the exigencies of modern business, many traders carry on with goods taken on hire-purchase system, and accordingly the foundation on which the doctrine of reputed ownership rests has practically no existence. The following observations in "Williams on Bankruptcy" are illuminating:—

"In considering the decided cases on reputation of ownership, the widespread prevalence in recent times

¹(1907) 2 K.B. 180.

²*Re. Parker, Ex parte Turquand*. (1885) 14 Q.B.D. 636, C.A. and the other decisions cited in Williams on Bankruptcy, 17th Edn., page 310.

of the practice of obtaining on hire-purchase almost all goods must be borne in mind. Reputation is a matter necessarily dependent on the habits of society and varies therewith, and the extension of the hire-purchase system has already considerably reduced the efficacy of the reputed ownership clause."¹ We accordingly recommend that a provision may be inserted in the Insolvency Acts, to the effect that goods taken on hire-purchase system are not subject to the doctrine of reputed ownership. So far as the Hire-Purchase Act is concerned, it would be sufficient to provide that the Official Receiver shall have the same rights and obligations in respect of them as the hirer had.²

11. We think that the Official Receiver should be authorised to assign the hirer's rights under the hire-purchase agreement, even if there is a prohibition in the agreement against such assignment. The reason is, that the Official Receiver, very often, might not have sufficient funds for paying the instalments of the hire-purchase price and would find it more convenient to transfer the rights to a third person. We have accordingly provided that the Official Receiver might assign the hire-purchase agreement with the permission of the Court, notwithstanding any prohibition contained therein.³

12. Section 8(1)(b) of the Hire-Purchase Act, 1938, Condition of Title. provides that in a hire-purchase agreement there shall be implied a condition that the owner will have the right to sell the goods at the time when property is to pass. This provision was adopted in the draft which was circulated, but in the questionnaire which we issued we called for opinion, as to whether we should provide that the owner should have the right to sell even at the date of the agreement. Quite a large number of opinions was received, and they revealed a sharp conflict. Though the majority opinion was decidedly in favour of the provision in the draft, out of deference to the opinion *contra*, we re-examined the question from all points of view, and came to the conclusion that there was no need to depart from the view embodied in section 8(1)(b) of the English Act, 1938, which we had adopted. We now proceed to state the grounds of our decision.

The matter may be considered under three heads: (1) nature of the transaction; (2) the law of hire-purchase as adopted in other countries; and (3) the consequences of adopting one view or the other, on the rights of parties, and on the prospects of the business.

¹Williams on Bankruptcy, 17th Edn., page 315.

²See Appendix I, clause 23.

³Appendix I, clause 23.

Nature of
the transac-
tion.

(1) A hire-purchase agreement is, as already stated,¹ a composite transaction, made up of two elements—bailment and sale. Viewing it as a contract of bailment, the question of title is wholly foreign to it, the bailee being estopped from disputing the title of the bailor. There is in such a contract no covenant for title, but the bailor is liable to the bailee for any loss which may result by reason of the fact that he is not entitled to make the bailment. Then there is the element of sale. In a contract for the sale of goods *simpliciter*, the condition as to title operates at the time when the property is to pass and not when the agreement is made, *vide* section 12(1) of the English Sale of Goods Act, 1893, and section 14(a) of the Indian Sale of Goods Act, 1930. The rights of a hirer under a hire-purchase agreement cannot be higher than those of a purchaser under an agreement to sell, because it is only when the hirer exercises his option and fulfils all the conditions laid down in the agreement that he becomes entitled to call upon the owner to convey the property in the goods to him. It would, therefore, be logical to provide that the condition as to title should operate in a hire-purchase agreement, as in an agreement of sale, only when the property is to pass. What purpose is served by insisting that the owner should have title even at the date of the agreement, if in fact the hirer may not choose to purchase the property, or may be unable to do so? Having regard, therefore, to the nature of the transaction, it would seem proper to provide² that the owner must have title only when the property is to pass.

Law in other
countries.]

(2) It will be now instructive to examine the law on this question in countries where hire-purchase transactions have been largely in vogue. In the Australian States, the law as to condition of title is the same as under section 8(1)(b) of the English Act, 1938. In America, section 2 of the Uniform Conditional Sales Act which applies to hire-purchase agreements contains the following as regards the rights of the hirer or the intending buyer:—

“The buyer shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract.”

The commentary on this section runs as follows:—

“The section states the fundamental rights of the conditional buyer, recognised everywhere, namely, the right to possession when not in default, and the right to title on performance of the condition”.³ Then again, “the buyer has the

¹*Vide* para. 7, *supra*.

²See Appendix I, clause 6(2)(a).

³Uniform Laws Annotated (Bogert). Vol. 2A, page 28.

right that title to the goods shall pass to him the instant he performs, or tenders performance of, the conditions precedent to the passage of property".¹ Subject to these provisions, the general law relating to sales applies.² Thus the law "recognised everywhere" insists only on the owner making out title at the time when the property is to pass.

It must be mentioned that in *Karflex Ltd v. Poole*,³ Goddard J., as he then was, took a different view. There, the hirer having defaulted in the payment of instalments, the owners seized the goods and sued for compensation as provided in the agreement. On the facts it was found that the plaintiffs had purchased the goods from a person who had got them by theft, and that accordingly they had no title to them at the date of the agreement, and even at the date of the action. There was in that agreement an express condition that the owner had title to the goods at that time, and in view of that, it was held by the court consisting of Acton and Goddard JJ., that as there was a breach of the condition as to title on which the agreement was based, no claim for compensation based on that agreement could be maintained. So far this decision is no authority for the proposition that apart from agreement there is to be implied in hire-purchase agreements a condition that the owner had title at the date of the agreement. But Goddard J., after basing his conclusion on the terms of the agreement, went on to observe that "where a person is letting out chattels of any description on hire-purchase, he does thereby impliedly contract, not that he will at sometime become possessed of that property during the currency of the agreement, but that he is the owner of the property at the time when he lets it out".⁴ No authority in support of this view was cited in the judgment or in the argument, nor is any such statement of law to be found in the English decisions or authoritative text-books or in Halsbury's Laws of England.⁵ First Edition, Volume 1, pages 554—556, where this subject is dealt with. The precise scope of the observations in *Karflex Ltd. v. Poole*, quoted above, came up for elucidation before the same learned Judge, in *Mercantile Union Guarantee Corporation v. Wheatly*.⁶ There the owner had not acquired the goods on the date of the hire-purchase agreement, but before they were

¹Uniform Laws Annotated, Vol. 2A, page 30.

²Section 29 of the Uniform Laws Annotated, Vol. 2, page 41.

³(1933) 2 K.B. 251.

⁴(1933) 2 K.B. 251, 263.

⁵Published in 1907.

⁶(1937) 4 A.E.R. 713, 718.

actually put into the possession of the hirer he had acquired them. The hirer having committed default, the owner sued him for damages and was met by the plea that by reason of the defect in title at the date of the agreement the suit was not maintainable, and the decision in *Karflex Ltd. v. Poole* was relied on. Goddard J., observed that he adhered to his statement of the law in *Karflex Ltd. v. Poole*, but that decision had no application because "the material time was when the bailment took place, not the actual moment of signing the agreement". The bailment no doubt took effect when possession was given, but the right to possession arose under the hire-purchase agreement. It was that agreement that fixed the rights of parties and that came into force when it was signed. It is understandable that a condition as to title should be implied at the date of the agreement, though it would be more logical to imply it when the title is to pass. But it is difficult to see how if a condition as to title is not to be implied at the date of agreement, it could be implied at the date of bailment. With respect, it would be a mismatch to link up a condition as to title with bailment. It is unnecessary to pursue the discussions, further because, shortly after these decisions, the English Hire-Purchase Act was passed in 1938, and the view that the condition of title operates at the time when the title to the goods is to pass was adopted. This provision has stood all these years without question, and the law may therefore be taken to be generally accepted that it is sufficient if the condition operates when the title is to pass.

Effect on
rights of
parties.

(3) We may now consider how the adopting of one view or the other would react on the rights of parties and the business in hire-purchase agreements. The question can be of practical importance only when the owner had no title at the date of the agreement, but had acquired it before it had to pass to the hirer. In such cases, will it result in hardship or injustice to the hirer, if the condition is that the owner should have title when the property is to pass? There are two different classes of cases with reference to which this question might be considered: (a) Where the transaction of hire-purchase is directly between the dealer and the hirer, and (b) where it is done through a financier.

(a) Taking up, first, cases of direct dealing between the dealer and the hirer, while a provision that the owner should have title at the time of the transaction would in general work satisfactorily in such cases, it is conceivable that it might work hardship in some cases. The reported cases show that the owner not infrequently acquires goods *bona fide* and for consideration in the full belief that he is getting good title,

but eventually it turns out that the person who sells them to him has had himself no title.¹ In such cases, if he is able to acquire title from the true owner before it is to pass to the hirer, no hardship is likely to be caused to the hirer. The acquisition of title by the owner in the *interim* period would be effective to protect all his rights under the agreement. It should also be borne in mind that where the owner is unable to acquire the title at the time when the title to the goods is to pass, it will make no difference in the position of the hirer or in the quantum of his rights whether the condition for title operates as on the date of the agreement or on the date on which the title is to pass. He has the right to claim damages for breach of the agreement to convey property, and all monies paid under the agreement would be returnable by way of damages. Where there is a simple agreement to sell goods and the seller is unable to convey title, the law is that, "in addition to recovering the difference between the market and contract price on that date, the buyer may also recover the price pre-paid with interest".² *Vide also Rameshwardas Poddar v. Paper Sales Ltd.*³ The position is the same when the owner in a hire-purchase agreement is unable to pass title when the hirer becomes entitled to it. It was so decided in *Warman's case*,⁴ where it was further held that the hirer was not even liable on the principle of *quantum meruit* to pay reasonable hire for his enjoyment of the property. Therefore, in this class of cases, a provision that the condition should operate as on the date when the title is to pass is not likely to result in any injustice to the hirer. On the other hand a provision that the condition is to operate on the date of the agreement will result in injustice to a *bona fide* dealer who has himself been deceived and has incurred further expenses in acquiring a good title.

(b) Then there is the second class of cases in which hire-purchase agreements are entered into through financiers. It appears that large-scale and wholesale dealers do not carry on business on hire-purchase system because that would oblige them to deal in second-hand goods, and throw additional burden on them in having to maintain a branch for hire-purchase business. That is how financiers become an essential factor in hire-purchase business. We must now examine how the financiers conduct the business. A financing company starts with some capital, but that will be too small to enable it to

¹*Vide Karflex Ltd. v. Poole*. (1933) 2 K. B. 251; *Warman v. Southern Counties Car Finance Corporation Ltd.* (1949) 1 A.E.R. 711; *Mercantile Union Guarantee Corporation v. Wheatly*, (1937) 4 A.E.R. 713.

²Pollock and Mulla, *Sale of Goods Act*, 2nd Edn., page 246.

³A.I.R. (1945) Bom. 21.

⁴*Warman v. Southern Counties Car Finance Corporation Ltd.* (1949) 1 A.E.R. 711.

purchase from the dealer all the goods which it proposes to give on hire. If every financing company were required to find its own funds for acquiring goods from dealers, the business of hire-purchase will cease to be paying, especially having regard to the risks with the hirers. What the company actually does is to adopt one of two courses. It arranges for overdraft with some bank, purchases the goods from the dealer on payment of the full price, and gives them on hire-purchase, the bank being given a general security over the agreements. In this class of cases, the financier becomes the full owner, and that presents no problems. But there is another mode by which finance companies do business. They do not pay the full price of the goods to the dealer, but take them under an arrangement which gives them the right to immediate possession and the right to purchase them in due course, but the title to the goods does not pass to them at that time. When in turn the financiers enter into a hire-purchase agreement with the hirer, they lawfully transfer to him the right to immediate possession and the right to purchase the goods which on fulfilment of all the conditions they themselves have. In practice, the amounts received by the financiers from the hirer are in turn paid over to the dealers, and by the time the hirer qualifies himself to obtain a purchase by payment of all the instalments, the financiers would have obtained a clean title to the goods. If we are now to provide that the condition as to title should operate as on the date of hire-purchase agreement, we would be striking at this class of business. Now a good portion of the business in hire-purchase system is said to be carried on in this mode, and what is more, the consumer goods are mostly dealt with in this manner. The object of this legislation being the expansion of industrialisation, that object would clearly be defeated if we are to provide that the condition as to title should operate as on the date of the agreement.

It may be argued against the above mode of business that it may result in serious injustice to the hirer, because it might happen that though he has paid all the instalments regularly to the financier, the latter might make default in paying them to the dealer, and that the latter would then seize the goods in the hands of the hirer. We consider that if regard is had to the normal course of business, this objection will be found to be groundless. Financing, as a regular business, is done not by individuals—because it will be beyond their capacity—but by companies who have a subscribed capital, and carry on business in accordance with rules. They provide a regular machinery to collect the instalments and pay them over to the dealer. The company itself being liable to the dealer for the value of the goods, it is inconceivable that the instalments received by it would not be paid by it to the dealer. It is again an

important factor to be taken into account, that the dealers have themselves a controlling hand in the management of the companies, and it is by reason of this fact that they extend to them the facilities of delivering goods with a view to being dealt with under hire-purchase agreements. That being the recognised course of business, the possibility of the dealer seizing the goods of the hirer in opposition to the financiers is a mere theoretical possibility, far removed from the realm of actualities. It should be added that if the hirer is in fact deprived of the goods by the dealer for the defaults of the financier, he is in law entitled to damages from the latter. Thus, whether we view the question as a matter of law or as a practical proposition, the hirer cannot suffer if the condition as to title is to operate when the property in the goods is to pass, whereas if it is to operate on the date of the agreement, it is bound to result in the closure of a large section of the financing system.

Then it is said, that if the condition as to title is to operate not at the date of the agreement but when title is to pass, that would result in fraudulent transactions by persons who do not own properties. The position must be examined. 'A' has in his possession goods which do not belong to him. Then he enters into a hire-purchase agreement with reference to them fraudulently, that is to say, with the knowledge that he has no title to them. In that case, the hirer B will be unable to acquire the title even though he pays all the instalments, and he might also be deprived of the possession of the properties by the real owner. B is thus damnified, and has to proceed against A to recover compensation. This, it is said, should be prevented. But then the question is, can this be prevented by providing that the condition should operate not at the date when the title is to pass but at the time of the agreement? *Ex hypothesi* we are dealing with a person who wants to commit a fraud. Is such a person scared away from his fraudulent schemes by a provision in the statute that the condition of title operates at the time of the agreement itself? It would make no difference to him whether it operates at the date of the agreement or at the time of the passing of title, because he has no thought of giving a good title at any time. Thus a provision that the condition should operate on the date of the agreement will have no effect on a fraudulent person, but may hit hard a *bona fide* dealer.

To sum up, the provision in the draft that the owner should have the right to sell when property in the goods is to pass is in consonance with the character of the transaction. It has been adopted as law in other countries. While this provision cannot result

¹Appendix I, clause 6(2)(a).

in any injustice to the hirer, a provision that the owner should have title to the goods on the date of the agreement might work hardship on *bona fide* dealers and hamper the growth of hire-purchase business. The preponderance of opinion, especially of Governments, of Chambers of Commerce, and of other mercantile interests, supports our view.

Sections of
the English
Act.

13. Such sections of the English Act as have been found useful, have been adopted by us.¹ We do not think it necessary to adopt the following provisions of that Act:—

Section 1.
Section 2(1).
Section 2(2)(c).
Section 3.
Section 5(a), (c), (d) and (e)
Section 16.
Section 18.
Section 19.
The Schedule.

(Sections 12 to 14 have been adopted in a simplified form.)

Minor
Changes.

14. We have explained the important proposals above. Our conclusions on minor matters arising from the English Act or otherwise relating to the subject are explained in the notes on clauses.

Appendices.

15. In order to give a concrete shape to our proposals, we have, in Appendix I, put them in the form of a draft Bill.

The notes on clauses (in Appendix II) explain, with reference to each clause in Appendix I, any points that might need elucidation.

Appendix III contains a list of witnesses examined by us.

Appendix IV contains our recommendations in respect of other Acts.

I. T. L. VENKATARAMA AIYAR—*Chairman*.

2. P. SATYANARAYANA RAO
3. L. S. MISRA
4. G. R. RAJAGOPAL
5. S. CHAUDHURI
6. N. A. PALKHIVALA

} *Members*

D. BASU,
Joint Secretary.

NEW DELHI :
The 5th May, 1961.

¹These have been cited in the margin against each clause in Appendix I.

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Explanation of abbreviations used in Appendix I.

H.P.A. 1938	The (English) Hire-Purchase Act, 1938. (1 and 2 Geo. 6, Ch. 53).
H.P.A. 1954	The (English) Hire-Purchase Act, 1954. (2 & 3 Eliz. 2, Ch. 51).
I.C.A.	The Indian Contract Act, 1872.
I.S.G.A.	The Indian Sale of Goods Act, 1930
New South Wales Bill, 1959	The Hire-Purchase Bill, 1959 (being the Uniform Hire-Purchase Bill as finally settled at conferences in Melbourne on 17th and 18th June, 1959).

APPENDIX I

Proposals as shown in the form of a draft Bill.

[This is a tentative draft only.]

[Corresponding sections of the existing Act are noted
in the margin.]



THE HIRE-PURCHASE BILL, 1961

A

BILL

to amend the law relating to the hire-purchase of goods.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Hire-Purchase Act, 1961.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

*Cf. s. 2(1),
H.P.A.,
1938.*

(a) “contract of guarantee”, in relation to any hire-purchase agreement, means a contract, which guarantees the performance of all or any of the hirer’s obligations under the hire-purchase agreement; and the expression “surety” shall be construed accordingly;

*Contrast
s. 2(2)(b)
H.P.A. 1938
which speaks
of “ins-
talment”.*

(b) “hire” means the sum payable periodically by the hirer under a hire-purchase agreement;

*Contrast
s. 21(I)
H.P.A.*

(c) “hire-purchase agreement” means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement;

and includes an agreement under which—

(i) possession of goods is delivered to another person, on condition that he pays an agreed amount in periodical instalments, and

(ii) the property in the goods is to pass to such person on the payment of the last of such instalments, and

(iii) such person has a right to terminate the agreement at any time before the property so passes;

(d) "hire-purchase price" means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of the goods to which the agreement relates;

*Cf. s. 21(1),
H.P.A., 1938.*

and includes any sum payable by the hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such an agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means;

*Cf. s. 3(1),
H.P.A. 195*

but does not include any sum payable as a penalty or as compensation or damages for a breach of the agreement;

(e) "hirer" means the person who obtains or has obtained possession of goods from an owner under a hire-purchase agreement, and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;

*Cf. s. 21(1),
H.P.A., 1938*

(f) "owner" means the person who lets or has let goods to a hirer under a hire-purchase agreement, and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law; and

*Cf. s. 21(1),
H.P.A.,
1938.*

(g) all words and expressions used and not defined in this Act but defined in the Indian Sale of Goods Act, 1930, shall have the meanings respectively assigned to them in that Act.¹

*3 of 1930.
Cf.s. 3 (25),
Navy Act,
1957 (62 of
1957).*

CHAPTER II

FORM AND CONTENTS OF HIRE-PURCHASE AGREEMENTS

3. (1) Every hire-purchase agreement shall be—

- (a) in writing, and
- (b) signed by all the parties thereto.

Hire-purchase agreements to be in writing and signed by all parties.

(2) A hire-purchase agreement shall be void if in respect thereof, any of the requirements specified in sub-section (1) has not been complied with.

Cf. s. 2(2) (a), H.P.A. 1938 and contrast s.2 (2), opening para, latter half, H.P.A. 1938.

¹See, for example, s. 2(2), 2(7), 2(11), 4, 12(2) and 12(3), I.S.G.A.

(3) Where there is a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the hire-purchase agreement is not so signed, the hire-purchase agreement shall be voidable at the option of the owner.

Contents of
hire-pur-
chase
agreements.

4. (1) Every hire-purchase agreement shall state—

*Cf. s. 2(2)
(b), H.P.A.
1938.*

(a) the hire-purchase price of the goods to which the agreement relates;

*Cf. s. 2(1)
and s. 2(2)
(b), H.P.A.,
1938.*

(b) the cash price of the goods, that is to say, the market value of the goods on the date of the agreement;

(c) the date on which the agreement shall be deemed to have commenced;

*Cf. s. 2(2)(b),
H.P.A., 1938.*

(d) the number of the instalments by which the hire-purchase price is to be paid, the amount of each of those instalments, and the date, or the mode of determining the date, upon which it is payable, and the person to whom and the place where it is payable; and

*Cf. s. 2(2)(b),
H.P.A.,
1938.*

(e) the goods to which the agreement relates, in a manner sufficient to identify them.

*Cf.
clause 3(2)
(d), New
South Wales
Bill, 1959.*

(2) Where any part of the consideration for a hire-purchase agreement is or is to be provided otherwise than in cash, the hire-purchase agreement shall contain a description of that part of the consideration.

*Contrast
s. 2(2),
opening lines
H.P.A.,
1938.*

(3) Where any of the requirements specified in sub-section (1) or sub-section (2) has not been complied with, the hirer may institute a suit for getting the hire-purchase agreement rescinded; and the court may, if it is satisfied that the failure to comply with any such requirement has prejudiced the hirer, rescind the agreement on such terms as it thinks just, or pass such other order as it thinks fit in the circumstances of the case.

*Two or
more agree-
ments when
treated as a
single hire-
purchase
agreement.
Cf.
s. 21(1)—
definition of
“hire-pur-
chase agree-
ment.”,
latter part,
H.P.A., 1938*

5. Where by virtue of two or more agreements in writing, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and the bailee has an option to purchase the goods, and the documents taken together comply with the requirements specified in sections 3 and 4, the agreements shall be treated for the purposes of this Act as a single hire-purchase agreement made at the time when the last of the agreements was made.

CHAPTER III

WARRANTIES AND CONDITIONS, AND PASSING OF PROPERTY

6. (1) Notwithstanding any agreement to the contrary, in every hire-purchase agreement there shall be an implied warranty—

Warranties and conditions to be implied in hire-purchase agreements.

Compare s. 8, H.P.A., 1938.

(a) that the hirer shall have and enjoy quiet possession of the goods, and

Cf. s. 14(b), I.S.G.A.

(b) that the goods shall be free from any charge or encumbrance in favour of any third party at any time when the property is to pass.

Cf. s. 14(c), I.S.G.A.

(2) Notwithstanding any agreement to the contrary, in every hire-purchase agreement there shall be—

(a) an implied condition on the part of the owner that he shall have a right to sell the goods at any time when the property is to pass;

Cf. s. 14(a), I.S.G.A.

(b) an implied condition that the goods shall be of merchantable quality, but no such condition shall be implied by virtue of this clause—

(i) as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made, or

Cf. s. 16(2), I.S.G.A.

(ii) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed, or

(iii) if the goods are second-hand goods and the agreement contains a statement to that effect.

Cf. s. 16(1), I.S.G.A. and s. 150, I.C.A.

(3) Where the hirer expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition in every hire-purchase agreement that the goods shall be reasonably fit for such purpose.

(4) An owner shall not be entitled to rely on any provision in a hire-purchase agreement excluding or modifying the condition set out in sub-section (3) unless he proves that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to him.

(5) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

Passing of
property.

7. Subject to the provisions of this Act, the property in the goods to which the hire-purchase agreement relates shall pass to the hirer only on the completion of the purchase in the manner provided in the agreement.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF THE HIRER

Right of
hirer to
purchase at
any time
with rebate.

8. (1) The hirer may, at any time during the continuance of the hire-purchase agreement and after giving to the owner not less than fourteen days' notice in writing of his intention so to do, purchase the goods to which the agreement relates on payment of the hire-purchase price as reduced by the amounts already paid by him to the owner towards the hire-purchase price and as further reduced by a rebate calculated in the manner provided in sub-section (2).

(2) The rebate for the purposes of sub-section (1) shall be equal to two-thirds of an amount which bears to the hire-purchase charges the same proportion as the balance of the hire-purchase price not yet due bears to the hire-purchase price.¹

Explanation.—In this sub-section, "hire-purchase charges" means the difference between the hire-purchase price and the cash price as stated in the hire-purchase agreement.

(3) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the hire-purchase agreement, but where the terms of the agreement entitle the hirer to a rebate higher than that allowed by this section the hirer shall be entitled to the rebate provided by the agreement.

(4) The Central Government may, by notification in the Official Gazette, declare that this section shall not apply or shall apply with such modifications as may be specified in the notification, to any goods or classes of goods, where it is satisfied that having regard to the fact that such goods or classes of goods are in short supply or are subject to restrictions in respect of import or similar considerations, such declaration is necessary in the public interest.

Right of
hirer to
terminate
agreement
at any time.

Contrast s. 4
(1), H.P.A.,
1938.

9. (1) The hirer may, at any time before the final payment under the hire-purchase agreement falls due, and after giving not less than fourteen days' notice in writing of his intention so to do and re-delivering the goods to the owner or tendering them to the owner, terminate the hire-purchase agreement by payment or

¹This can be expressed in the following formula :—

$$\text{Rebate} = \frac{\text{Hire purchase charges} \times \text{Number of instalments not due}}{\text{Number of total instalments.}}$$

tender to the owner of the amounts which have accrued due towards the hire-purchase price and have not been paid by him, including the sum, if any, which he is liable to pay under sub-section (2).

(2) Where the hirer terminates the agreement under sub-section (1), and the agreement provides for the payment of a sum named on account of such termination, the liability of the hirer to pay that sum shall be subject to the following conditions:—

(a) where the total of the sums paid and the sums due in respect of the hire-purchase price immediately before the termination exceeds one-half of the hire-purchase price, the hirer shall not be liable to pay the sum so named;

(b) where the total of the sums paid and the sums due in respect of the hire-purchase price immediately before the termination does not exceed one-half of the hire-purchase price, the hirer shall be liable to pay the difference between the said total and the said one-half, or such less sum as may be named in the agreement;

(c) nothing in this sub-section shall prejudice any liability of the hirer for any hire which might have accrued due before the termination.

(3) Any provision in any agreement, whereby the right conferred on a hirer by this section to terminate the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this section, shall be void.¹ Cf. s5(b),
H.P.A., 1938.

(4) Nothing in this section shall prejudice any right of a hirer to terminate a hire-purchase agreement otherwise than by virtue of this section. Cf. s. 4 (4)
and s.4(1)
H.P.A.,
1938.

10. A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation as aforesaid, the Right of
hirer to
appropriate
payments in
respect of
two or more
agreements.

Cf. s. 9,
H.P.A., 1938.

¹Sections 5(a), [prohibition against entry by owner etc.], 5(d) [nullifying any provision whereby a person acting on behalf of the owner is treated as hirer's agent] and 5(e) [nullifying any provision relieving an owner from liability for the acts of his agent etc.] of the H.P.A., 1938, have been omitted, as such elaborate provisions appear to be unnecessary in India.

Section 5(c) of the H.P.A., 1938, in effect extends the beneficial provisions to termination of the agreement by any mode. This has been regarded as too wide and has, therefore, been omitted

sum so paid shall, by virtue of this section, stand appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the order in which the agreements were entered into.

Right of
hirer to
assign his
right, title
and interest
under the
agreement.

11. (1) The right, title and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the owner or, if his consent is unreasonably withheld, without his consent.

Cf. New
South Wales
Bill, Clause
9.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent for such an assignment as is mentioned in sub-section (1), and where an owner requires any such payment or any other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where on a request for his consent thereto being made by a hirer the owner fails or refuses to give his consent to such an assignment as is mentioned in sub-section (1), the hirer may apply by petition to the court for an order declaring that the consent of the owner to the assignment has been unreasonably withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld.

Explanation.—In this section “court” means a court which would have jurisdiction to entertain a suit for the relief claimed in the petition.

(4) As a condition of granting such consent, the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and may require the hirer and the assignee to execute and deliver to the owner an assignment agreement, in a form approved by the owner, whereby, without prejudicing or affecting the continuing personal liability of the hirer in such respects the assignee agrees with the owner to be personally liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term*thereof and whereby the assignee indemnifies the hirer in respect of such liabilities.

(5) The provisions of this section shall apply notwithstanding anything to the contrary contained in the hire-purchase agreement.

Obligations
of the hirer
to comply
with the
agreement.

12. Subject to the provisions of this Act, the hirer shall be bound—

(a) to pay the hire in accordance with the agreement, and

(b) otherwise to comply with the terms of the agreement.

13. (1) The hirer is, in the absence of a contract to the contrary,—

Obligation of hirer in respect of care to be taken of goods.

(a) bound to take as much care of the goods to which the hire-purchase agreement relates as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value; and

Cf. s. 151, I.C.A.

(b) not responsible for the loss, destruction or deterioration of the goods, if he has taken the amount of care thereof described in clause (a).

Cf. s. 152, I.C.A.

(2) The hirer is liable to make compensation to the owner for any damage caused by failure to take care of the goods in accordance with the provisions of subsection (1).

14. If the hirer makes any use of the goods to which the hire-purchase agreement relates which is not according to the conditions of the agreement, the hirer shall be liable to make compensation to the owner for any damage arising to the goods from or during such use of them.

Obligation of hirer in respect of use of goods.
Cf. s. 154, I.C.A.

15. (1) Where by virtue of a hire-purchase agreement a hirer is under a duty to keep the goods comprised in the agreement in his possession or control, the hirer shall, on receipt of a request in writing from the owner, inform the owner where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.

Obligation of hirer to give information as to whereabouts of goods.
Cf. s. 7, H.P.A., 1938

(2) If a hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be punishable with fine which may extend to two hundred rupees.

CHAPTER V

RIGHTS AND OBLIGATIONS OF THE OWNER

16. Where the hirer—

(a) makes default in the payment of hire as provided in the hire-purchase agreement; or

Right of owner to terminate hire-purchase agreement for default in payment of hire or unauthorised act or breach of express conditions

(b) does any act with regard to the goods to which the agreement relates which is inconsistent with any of the terms of the agreement; or

As to (b) see s. 153, I.C.A.

As to (c)
see s. III
(g), Transfer
of Property
Act.

(c) breaks an express condition which provides that, on the breach thereof, the owner may terminate the agreement;

the owner shall, subject to the provisions of sections 19 and 20, be entitled to terminate the agreement by giving to the hirer notice of termination in writing.

Rights of
owner on
termination.

17. Where a hire-purchase agreement is terminated under this Act, then the owner shall be entitled,—

(a) to retain the hire which has accrued due and which has already been paid;

(b) to recover the arrears of hire due;

(c) subject to the provisions of sub-section (2) of section 9, to forfeit the initial deposit, if so provided in the agreement;

(d) subject to the provisions of section 18, and subject to any contract to the contrary, to seize the goods;

(e) subject to the provisions of sections 19 and 20, to recover possession of the goods by suit or by petition under section 18; and

(f) to damages for non-delivery of the goods, from the date on which the termination is effective, to the date on which the goods are delivered to or seized by the owner.

Restriction
on owner's
right to re-
cover pos-
session of
goods other-
wise than
through
Court.

Cf. s. II,
H.P.A.,
1938.

18. (1) Where goods have been let under a hire-purchase agreement and the statutory proportion of the hire-purchase price has been paid, whether in pursuance of a judgment or otherwise, or tendered by or on behalf of the hirer or any surety, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by petition under sub-section (3) or by suit.

Explanation.—In this section, “statutory proportion” means—

(a) one-half, where the hire-purchase price is fifteen thousand rupees or less, and

(b) three-fourth, in other cases.

(2) If the owner recovers possession of goods in contravention of the provisions of sub-section (1), the hire-purchase agreement, if not previously terminated, shall terminate, and—

(a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner¹ all sums paid by the hirer under the agreement or under any security given by him in respect thereof; and

(b) any surety shall be entitled to recover from the owner² all sums paid by him under the con-

¹—² The words “in a suit for money had and received” occurring in the English Act have been omitted, as unnecessary.

tract of guarantee or under any security given by him in respect thereof.

(3) Where, by virtue of the provisions of sub-section (1), the owner is precluded from enforcing a right to recover possession of the goods, he may present a petition for recovery of possession of the goods to any court having jurisdiction to entertain a suit for the same relief.

(4) The provisions of this section shall not apply in any case in which the hirer has terminated the agreement¹ by virtue of any right vested in him.

19. Where the owner, after he has terminated the hire-purchase agreement in accordance with the provisions of clause (a) of section 16, institutes any suit or presents any petition against the hirer for the recovery of the goods, and at the hearing of the suit or petition, the hirer pays or tenders to the owner the hire in arrears, together with such interest thereon as may be payable under the terms of the agreement and his full costs of the suit or petition and complies with such other conditions, if any, as the court may think fit to impose, the court may, in lieu of making a decree or order for specific delivery, pass an order relieving the hirer against the termination; and thereupon the hirer shall continue in possession of the goods as if the agreement had not been terminated.

Relief against termination for non-payment of hire. Contrast s. 12(1) read with s. 11 (1), H.P.A. 1938. Compare s. 114, Transfer of Property Act, 1882. Contrast ss. 12-14, H.P.A., 1938.

20. (1) Where a hire-purchase agreement has been terminated in accordance with the provisions of clause (b) or clause (c) of section 16, no suit or petition by the owner against the hirer for the recovery of the goods shall lie unless and until the owner has served on the hirer a notice in writing—

Relief against termination for unauthorised act or breach of express condition. Cf. s. 114A, first paragraph, Transfer of Property Act, 1882.

(a) specifying the particular breach or act complained of; and

(b) if the breach or act is capable of remedy, requiring the hirer to remedy it;

and the hirer fails, within a period of fourteen days from the date of the service of the notice, to remedy the breach or act if it is capable of remedy.

(2) Nothing in this section shall apply to an express condition relating to termination in case of non-payment of hire.²

Cf. s. 114A, last para., Transfer of Property Act, 1882.

¹The words "or the bailment" occurring in the English Act, have been omitted, as unnecessary.

²As to assignment, etc., see clause 11. In view of the provisions of that clause, breach of a term prohibiting assignment is not mentioned in this clause.

Obligation
of owner to
supply cop-
ies and
information.

Cf. s. 6,
H.P.A.,
1938.

21. (1) It shall be the duty of the owner to supply, free of cost, a true copy of the hire-purchase agreement, signed by the owner,—

(a) to the hirer, as soon as may be after execution of the agreement; and

(b) where there is a contract of guarantee, to the surety, on demand made at any time before the final payment has been made under the agreement.

(2) It shall also be the duty of the owner, at any time before the final payment has been made under the hire-purchase agreement, to supply to the hirer, within fourteen days after the owner receives a request in writing from the hirer in this behalf and the hirer tenders to the owner the sum of one rupee for expenses, a statement signed by the owner or his agent showing—

(a) the amount paid by or on behalf of the hirer;

(b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment; and

(c) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(3) Where there is a failure without reasonable cause to carry out the duties imposed by sub-section (1), or sub-section (2), then, while the default continues,—

(a) the owner shall not be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, or to enforce any right to recover the goods from the hirer, and

(b) no security given by the hirer in respect of money payable under the agreement or given by a surety in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or the surety by any holder thereof;

and, if the default continues for a period of one month, the defaulter shall be punishable with fine which may extend to two hundred rupees.

CHAPTER VI

MISCELLANEOUS

22. Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of sections 8, 9, 18 and 21, be deemed to be a payment of that part of the hire-purchase price.

Discharge of price otherwise than by payment of money.
Cf. s. 21(2), H.P.A., 1938.

23. (1) Where, during the continuance of the hire-purchase agreement, the hirer is adjudged insolvent under any law relating to insolvency for the time being in force, the Official Receiver shall have, in respect of the goods which are in the possession of the hirer under the agreement, the same rights and obligations as the hirer had in relation thereto.

Insolvency of hirer.

(2) The Official Receiver may, with the permission of the Insolvency Court, and notwithstanding anything to the contrary contained in the hire-purchase agreement, assign the rights of the hirer under the agreement, to any other person, and the assignee shall have all the rights and be subject to all the obligations of the hirer under the agreement.

Explanation.—In this section, "Official Receiver" means an Official Receiver appointed under the Provincial Insolvency Act, 1920, and includes any person holding a similar office under any other law relating to insolvency for the time being in force.

5 of 1920

24. Where goods have been let under a hire-purchase agreement, and at any time thereafter the owner makes a further hire-purchase agreement with the hirer relating to other goods, any such further hire-purchase agreement shall not have effect in so far as it affects prejudicially any right which the hirer would have had by virtue of section 18 under the first-mentioned agreement, if such further hire-purchase agreement had not been made.

Successive hire-purchase agreements between the same parties.

Cf. s. 15, H.P.A., 1938.

25. (1) Where, in a suit or petition by an owner of goods which have been let under a hire-purchase agreement to enforce a right to recover possession of the goods from the hirer, the owner proves that, before the commencement of the suit or petition and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purpose of the owner's claim to recover possession thereof, be deemed to be adverse to the owner.

Evidence of adverse detention in suit or petition to recover possession of the goods.

Cf. s. 10, H.P.A., 1938.

(2) Nothing in this section shall affect a claim for damages for conversion.

Hirer's refusal to surrender goods not to be conversion in certain cases.

Cf. s. 17, H.P.A., 1938.

Service of notice.

Cf. clause 37, New South Wales Hire-purchase Bill, 1959.

Act not to apply to existing agreements.

Contrast, s. 20, H.P.A., 1938.

26. If, whilst by virtue of this Act the enforcement by an owner of a right to recover possession of goods from a hirer is subject to any restriction, the hirer refuses to give up possession of the goods to the owner, the hirer shall not, by reason only of the refusal, be liable to the owner for conversion of the goods.

27. Any notice required or authorised to be served on or given to an owner or a hirer under this Act may be so served or given—

(a) by delivering it to him personally; or

(b) by posting it addressed to him at his last known place of residence or business.

28. This Act shall not apply in relation to any hire-purchase agreement made before the commencement of this Act.



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APPENDIX II

NOTES ON CLAUSES

Clause 1

The clause does not need any comments.

Clause 2

Para (a)—“contract of guarantee”.—(i) The definition of contract of guarantee does not use the words “at the request expressed or implied of the hirer”. The omission of these words is intended to maintain conformity with the definition of “consideration” in section 2(d) of the Indian Contract Act, which says, that when at the desire of the *promisor* the promisee etc. has done etc. something, such act etc. is called consideration. (Under section 127 of the Indian Contract Act, anything done or any promise made for the benefit of the principal debtor is sufficient consideration to be surety for giving the guarantee).

(ii) As the Indian Contract Act uses the expression “surety” that has been adopted here, instead of “guarantor”.

(iii) In other respects, the English Act has been followed.

*Para (b)—“hire”.—*The provision in the English Act [section 2(2)(b)], which speaks of ‘instalment’ seems rather technical. The definition adopted here gives a more concrete picture. Obviously, hire is paid for possession or use of the goods—a proposition which need not be incorporated in the definition.

*Para (c)—“hire-purchase agreement”.—*The definition of hire-purchase agreement in the English Act does not give a vivid description of the nature of the agreement. A hire-purchase agreement is an agreement—

(i) for hire at the inception,

(ii) with an option to purchase.

The definition in the draft clause is intended to bring out the true nature and character of the transaction.

(A hire-purchase transaction constituted by two or more separate agreements has been dealt with separately).¹

¹See clause 5.

The case where without an overt act by the hirer the property automatically passes to the hirer would not be covered merely by the words "option to purchase" and an attempt has been made to cover such cases also.¹⁻²

Para (d)—"hire-purchase price".—This follows the English Act, in substance.

The inclusive provision has been taken from section 3(1) of the (English) Hire-Purchase Act, 1954. This provision was not there originally in the 1938 Act. The words "whether that sum is to be or has been paid to the owner or to *any other person*" appear to have been intended partly to nullify the decision of the Court of Appeal,³ wherein it was held that a payment made to a third person (that is, a person other than the owner of the goods) could not be regarded as a part of the hire-purchase price. It was argued in that case that such a payment formed a part of the hire-purchase price, thus increasing the amount of the hire-purchase price and taking it above the maximum to which the Act then applied. This argument was negatived, and in consequence it was held that the 1938 Act was applicable to the facts of this case. While the provision in the English Act which lays down the maximum limit for the application of the Act⁴ has not been adopted in the draft, it is felt that the inclusive provision can safely be retained as serving a useful purpose for governing the scope of the expression "hire-purchase price" occurring at other places in the draft clauses.

The definition has been framed so as to begin with the meaning of the expression; it then states what is *included* (by reason of the provision already discussed above), and then states what is *excluded*. It is felt that this scheme is better than that adopted in the English Act.

Para (e)—"hirer".—This follows the English Act.

Para (f)—"owner".—This follows the English Act.

Para (g)—This will be useful for expressions like "condition", "warranty", "delivery", etc.

Clause 3

Section 2 of the English Act contains elaborate prescriptions as to requirements of a hire-purchase agreement.

¹See Uniform Laws Annotated, Vol. 2A, page 21 (Annotation by Bogert).

²See also the body of the Report, para. 5.

³*Menzies v. United Motor Finance Corpn. Ltd.* (1940) 1 All. E.R. 549 (Court of Appeal).

⁴Section 1, clauses (b) and (c) of the (English) Hire-Purchase Act, 1938, as amended by the 1954 Act.

In order to simplify it, the provision has been split up into two clauses in the draft. The requirements relating to *form* have been incorporated in the clause under discussion, while the requirements relating to *contents* have been set out in a separate clause.¹

The clause provides that the agreement must be in writing and signed by the parties. It is felt that these safeguards are necessary for preventing fraud etc.

It has been made clear that a breach of the requirements relating to form will make the agreement void. In this respect, the clause goes further than section 2(2) (a) of the English Act, which makes it unenforceable, but not totally void.

Where the agreement is not signed by the surety, it is considered that the agreement need not be made void or voidable in relation to the *hirer*. It need not also be made void or voidable at the *instance of the surety*; in such cases, it is considered, it should be sufficient to provide that the agreement is voidable at the owner's instance. The only person who is likely to be prejudiced by the surety's not signing the hire-purchase agreement is the owner.

Clause 4

Sub-clause (1).—As already explained,² the provisions relating to contents have been separated from those relating to form, and have been placed in this clause.

The clause, in substance, follows the English Act, but an attempt has been made to make it simpler by dividing the requirements into items (a), (b), etc.

It is considered that the agreement should state particulars regarding the person to whom the instalments are payable, the number of instalments etc. and the date on which the hiring should be deemed to have commenced. Further, as regards the "cash price" it is considered that the agreement should, as cash price, state the market value of the goods on the date of the agreement. The reason is, that where the person who lets out the goods is not the owner but only a financier, it would not be appropriate to speak of the price at which the goods "may be purchased" by the hirer, because the financier would not always be in a position *himself* to sell the goods to the *hirer* at that stage. The only object behind requiring a statement of the cash price is simply to have a rough idea of the market price, so that the difference between the hire-purchase price and the cash price can be ascertained, and the profit made by the owner gauged. This object would continue to be achieved by the words proposed to be used.

¹See clause 4.

²See notes to clause 3.

Sub-clause (2).—Where the consideration is in the form of kind, it would be useful to mention it in the hire-purchase agreement. Hence this provision.

Sub-clause (3).—Where the owner does not state in the hire-purchase agreement the particulars required to be stated by this clause, it would suffice if the hirer is given an option to avoid the agreement through Court. Section 2(2), opening lines, of the English Act, in such circumstances, provides that the owner shall not be entitled to enforce the hire-purchase agreement or any contract of guarantee or any right to recover the goods from the hirer etc. (There is a proviso allowing the Court to dispense with a particular requirement). It is considered that this goes too far, and may work hardship on the owner in a large number of cases. To make the agreement completely unenforceable and even to bar the right to recover the goods from the hirer appear to be sanctions which are rather harsh for a provision relating to contents of an agreement. The hirer can go to Court, and the Court can give relief according to the justice of the case.

Clause 5

Substance.—Sometimes the parties instead of entering into a single hire-purchase agreement, execute two or more agreements which, taken together, amount to a hire-purchase agreement. (In such cases, there is a separate agreement of hire and a separate agreement of purchase). With reference to such agreements, four possible courses can be adopted:—

(a) Such agreements may be allowed, *provided* they conform to the other provisions of the Act. That is the course adopted in the English Act, *vide* the definition of "hire-purchase agreement" in section 21(1). H.P.A., 1938.

(b) The agreement for hire may be allowed to stand and the agreement for purchase may be declared to be void.

(c) Both the agreements may be allowed to stand, but they may be treated as not falling within the Act and as not constituting or having the effect of a hire-purchase agreement. Compare the treatment accorded to mortgages by conditional sale under section 58(c), *proviso*, of the Transfer of Property Act, 1882.

(d) Both the agreements may be declared to be void.

The course at (a) above has been adopted, as in the English Act, as just to all parties and as not likely to raise difficulty too often.

The course at (b) above has been rejected, because that would be contrary to the real intentions of the parties and would give the owner an advantage which was not agreed to by the parties.

The course at (c) above has been rejected, since it would enable many persons to evade the application of the proposed Act by splitting up the transaction into two agreements.

The course at (d) above has been rejected, as too drastic.

Form:—The language of the English Act has been followed with two changes:—

(i) the words "either the bailee.....may pass to the bailee" have been replaced by "the bailee has an option to purchase the goods", in consonance with the definition of 'hire-purchase agreement' as proposed.¹

(ii) It has been made clear that the agreements taken together should satisfy the conditions of validity.

(iii) Instead of "single" agreement, the words "single hire-purchase agreement" have been used, for precision.

[In view of (ii) above, this is not likely to create any complications.]

Clause 6

General.—Section 8 of the English Act sets out the conditions and warranties which are to be implied in hire-purchase agreements, and that has, in general, been adopted in this clause.

Condition for title—when owner should have title

It will be seen that under the draft, the condition as to the title of the owner is to operate at the time when the property in the goods is to pass.²

Sale of Goods Act

Though some of the warranties and conditions dealt with in this clause are also dealt with in some provisions of the Indian statute law,³ still, for the sake of comprehensiveness they have been included in the draft, on the lines of the English Act.

Structure of clause

The structural arrangement of clauses given in the English Act has been departed from, in order to deal separately with warranties, conditions other than those of fitness, and condition of fitness.

¹See clause 2—"hire-purchase agreement".

²For a detailed discussion see the body of the Report, paragraph 12.

³These have been cited in the margin against the clause.

"At any time when the property is to pass".

The words "at any time when the property is to pass" have been used (instead of "at the time when the property is to pass") to leave no doubt that the clause applies both (i) when the property passes under the agreement, and (ii) when it passes by virtue of the Act—by premature purchase.

Clause 7

Though the English Act does not contain any provision as to the point of time at which property passes to the hirer, it is felt that such a provision would be useful. The property does not pass to the hirer immediately on the execution of the agreement,¹ and the clause under discussion is intended to make this clear. The exact date on which the property passes will, of course, depend on the terms of the agreement,² but the clause will serve the purpose of removing any misapprehension to the effect that property passes at an earlier stage.

Clause 8

Purchase at any time

1. The hirer need not wait until the last instalment matures. He can accelerate the purchase of the goods at any time during the subsistence of the agreement, so that he need not wait until the full span of the instalments is exhausted.³

Rebate for early purchase

2. The question, however, arises whether the law should stop here. That would mean that the owner gets the full hire-purchase price. The concession that the hirer gets is merely in point of time and not in point of money. The hire-purchase price would include interest etc. also, and by getting the full hire-purchase price, the owner would be able to invest it and again earn interest thereon—a position which would be of advantage only to the owner. After careful consideration, it is felt that the hirer should be allowed some rebate, when the owner gets the whole balance in lump sum.

¹See Benjamin on Sale, Eighth Edition, page 314.

²*Cf. Ex parte Crawcour*, (1878) 9 Ch. D-419 = 47 L.J. Bkcy, 94 (C.A.).

³As has been held in *Lancashire Waggon Co. v. Nuttall*, (1880) 42 L.T. 465 C.A. cited in Benjamin on Sale, 8th edition, page 315, the provision for payment by instalments is for buyer's benefit; he may anticipate the payments, so as to vest the property in him on full payment.

Rebate and "hire-purchase charges"

3. The next question is, if a rebate is to be given, how should it be calculated. Opinion is almost unanimous, that the calculation should be with reference to the difference between the hire-purchase price and the cash price. This difference is known in business practice as "hire-purchase charges". The rebate should be related to the hire-purchase charges.

Fraction of hire-purchase charges

4. But the question is, should the rebate be given for the *whole* hire-purchase charges or should it be given only for a fraction thereof? From the evidence taken by the Commission, it would appear that while interest and similar charges may be distributable and apportionable over the whole period, expenses like office charges and establishment expenses are not so distributable as these are incurred once and for all for every transaction. Therefore, some deduction has to be made on this account while allowing rebate, and the draft proposes a reduction of one-third as representing office charges, i.e., so much of hire-purchase charges as represents office charges—(one-third according to the draft) will be excluded in giving rebate.

Period of hire-purchase charges to be taken into account

5. Then the next question that remains to be considered is, whether the hire-purchase charges for the *whole period* should be taken into account, or the hire-purchase charges proportionate to the *unexpired period* should be the basis. In fairness to the owner, the latter should be regarded as the correct basis, and has been adopted.

6. Where the provision in the agreement is more favourable to the hirer and allows a higher rebate, that will prevail, and that has been made clear. Further, where the goods are in short supply or subject to import restrictions, or similar circumstances exist whereby early purchase of the goods may not be in the public interest, the Central Government should have power to exempt such goods from the clause or modify the application of the clause in relation to such goods. Necessary provision has been made.

"Balance not yet due"

The rebate has to be linked up with the balance. If the purchase is made early, the balance will be high, and correspondingly, the rebate will also be high. But this balance, it should be noted, means the amount "not yet due". It should be added that if the words "not yet paid" are adopted it would make a difference. If the amount has become due, it no longer forms part of the balance, whether it is paid or it is not paid. To link

up the rebate with the balance "not paid", might create an unintended consequence, because the hirer may postpone the payment and thereby earn a higher rebate. For example, if, out of the total hire-purchase price of Rs. 10,000, Rs. 8,000 has become due but only Rs. 6,000 has been paid, the balance "not due" is Rs. 2,000 but the balance "not paid" is Rs. 4,000. It would be to the advantage of the hirer, if the test "unpaid balance" is adopted. The hirer would thus benefit by his own default—which is not the intention.

Summary of the various formulas suggested

7. For convenience of study, the possible formulas for rebate suggested by or to the Commission in the course of the evidence or in the written comments are collected below:—

No rebate

(i) Hirer may purchase at any time on payment of the hire-purchase price less the amount already paid towards the hire-purchase price. (This was the provision embodied in the Draft Bill as originally circulated. Arithmetically speaking, there is no rebate here. The provision merely gives a right to the hirer to purchase straightaway without waiting till the expiry of the full time contemplated by the agreement).

Rebate = $\frac{1}{2}$ hire-purchase charges for whole period

(ii) If the hirer purchases the goods within a very short period—say three months—rebate of one-half of the difference between the cash price and the hire-purchase price should be allowed. This was the question put as Question No. 2(b) while circulating the Draft Report.

Rebate = hire-purchase charges for unexpired period

(iii) The rebate should be linked up with the balance of the hire-purchase price. This is in effect the suggestion of the Allahabad High Court (S. No. 58 in the file of the Commission). This can be expressed in the following formula (substituting amount in place of period):—

"The hirer (provided he has paid all the instalments due) shall pay an amount which bears to the cash price the same proportion as the balance of the hire-purchase price bears to the hire-purchase price."

Here, *in effect*, the rebate amounts to the hire-purchase charges *proportionate to the balance*, that is, for unexpired period.

(iv) Clause 11 (2) of the New South Wales Hire-Purchase Bill, 1959, read with the definition of "statutory rebate", expressed in simple manner, would be found to lay down that the rebate is equal to the hire-purchase charges multiplied by the number of months still to go and then divided by the total number of months contemplated by the agreement. In other words, the rebate is limited to the hire-purchase charges for the *unexpired period*. This is in effect the same as that suggested by the Allahabad High Court.

Rebate $\equiv \frac{1}{2}$ hire-purchase charges for unexpired period

(v) The test suggested in the course of evidence by Witness No. 2—The Upper-India Hire-Purchase Companies Association Ltd. New Delhi—was that the rebate should not exceed *one-half* of the hire-purchase charges for the unexpired period. This is more stringent than the New South Wales Bill, because in the New South Wales Bill the *whole* hire-purchase charges for the unexpired period are allowed, while under the test suggested by the witness even the hire-purchase charges proportionate to the unexpired period *have to be halved*. [This is also different from the test suggested by the Commission in the Questionnaire, because the Commission suggested one-half of the difference between the cash price and the hire-purchase price, that is to say, one-half of the hire-purchase charges for the *whole* period.]

$\frac{1}{2}$ hire-purchase charges

(vi) Witness No. 3—The Bombay Transport Financiers Association Ltd. Bombay—after stressing the fact that rebate depends on personal considerations, ultimately agreed to a formula based on the one-third to one-half of the difference between the cash price and the hire-purchase price.

(vii) Witness No. 1—The Sundaram Finance Ltd. Madras—stressed the fact that it would be very difficult to lay down a proportion by statute or to provide for a sliding scale, because the rebate to be given very often depends on the relations of the company with the party, the stage at which the rebate is asked for, etc. Towards the end the witness suggested that if the hirer paid the whole balance after *one-half* of the period has expired, then one-third of the financing charges for the unexpired period may be given as a rebate.

Clause 9

Section 4 of the English Act deals with the right of a hirer to terminate the agreement. Under the law he is entitled to do so at any time, and return the goods, and in that event he should properly be liable only for the hire upto that date. But the agreements generally provide that when the hirer terminates them, he should pay an amount specified therein and that, as already stated,¹ was often penal and exorbitant. This was one of the evils sought to be redressed by the Act. Dealing with this matter, section 4 provides that on termination of the agreement the hirer shall "be liable, without prejudice to any liability which has accrued before termination, to pay the amount, if any, by which one-half of the hire-purchase price exceeds the total of the sums paid and the sums due in respect of hire-purchase price immediately before the termination, or such less amount as may be specified in the agreement". The result of this section is, that if the minimum amount specified in the agreement exceeds one-half, the hirer is liable to pay only one-half and not more.

In adopting the principle of this section, the clause under discussion tries to express it in a language which deals with each situation separately—namely (i) where the amount paid exceeds $\frac{1}{2}$ and (ii) other cases. Where there is, under the agreement, no minimum payment to be made, nothing need be paid as penalty. This is also clear from the language of the draft.

It is also provided that the hirer should give notice to the owner (before termination) and deliver the goods and pay up the amounts due.

Section 4(2) of the English Act deals with the hirer's liability to pay damages for not taking reasonable care. This subject has been dealt with in a separate clause², and does not, therefore, find a place in the clause under discussion.

According to section 5(b) of the English Act, any agreement which bars the right conferred by the Act on the hirer is void, and that has been adopted in this clause also.

Clause 10

Section 9 of the English Act deals with the question of appropriation of payments made by a hirer when he has entered into successive agreements of hire-purchase with the same owner. The section enables a

¹See the body of the Report, para. 2.

²See clause 13.

hirer to appropriate his payments towards the agreements in such manner as he decides so as to enable him to save some of the goods at least, if he cannot save all of them.

The clause under discussion follows this section. The wording, "the sum shall stand appropriated" has been used for clarity.

One important change, however, as compared with the English Act is, that while under the English Act in the absence of appropriation by the hirer, the payments are appropriated towards the sums due under the various hire-purchase agreements in the proportions which those sums bear to one another, under the draft proposed the amounts would be appropriated *in the order in which the agreements were entered into*. This is considered to be more fair to the owner and follows section 6 of the Hire Purchase Act, 1958 of Western Australia (55 of 1958).

It is considered unnecessary to incorporate the further refinements appearing in section 61 of the Indian Contract Act, 1872, regarding (i) limitation and (ii) situations where the amounts are of equal standing.

Clause 11

This clause is intended to lay down the position regarding assignment of the hirer's rights under the agreement. It is considered that assignments should be allowed with the owner's consent, but that if he unreasonably withholds his consent, the hirer should be free to go to the court and obtain a declaration that the consent has been unreasonably withheld.¹

It is considered that the owner should not charge any consideration for the consent, except the making good of past defaults and the execution of an agreement which continues the liability of the original hirer and also makes the assignee liable for future while indemnifying the hirer.

Clause 12

This is intended merely to state the obligations of the hirer and has been inserted to make the Bill complete.

¹See also the discussion in the body of the Report, paragraph 7.

Clause 13

This deals with the care to be taken of goods and follows similar provisions¹ in the Contract Act.

The Law Commission has, in its Report on the Contract Act,² recommended that section 151 of the Indian Contract Act may be made subject to a contract to the contrary. In conformity with this recommendation, sub-clause (1), paragraph (b) has been made subject to a contract to the contrary.

[Section 152 of the Contract Act, which corresponds to sub-clause (1), paragraph (a), is already subject to a contract to the contrary.]

Clause 14

This embodies provisions as to the use to which the hirer can put the goods. The clause mainly follows section 154, Indian Contract Act.

Clause 15

This follows the English Act.

Clause 16

Para (a).—This embodies the rule that if the hirer makes a default in the payment of hire the owner may terminate the agreement. Though such provisions are usually found in the agreement, it has been considered proper to place this right of the owner on a statutory footing.

(There is no such provision in the English Act).

Para (b).—If the bailee does any act with regard to the goods bailed which is inconsistent with the conditions of bailment, the owner has, under section 153 of the Indian Contract Act, the right to terminate bailment. That has been embodied here, with suitable verbal modifications.

Para (c).—This enunciates the rule that if the hirer commits breach of an express condition providing for termination of the agreement providing for its breach, the owner may terminate the agreement.

Section 111(g) of the Transfer of Property Act has been followed as a model, and it has been provided that the termination will be by a notice in writing.

(There is no such provision in the English Act).

¹Cited in the margin against the clause.

²13th Report (Contract Act), pages 59-60, paragraph 121.

Clause 17

For the sake of comprehensiveness, the rights that flow to the owner on termination of the agreement have been enumerated here.

(There is no such provision in the English Act).

The owner's right to seize the goods extra-judicially will be operative in all cases unless there is a specific contract to the contrary. The right will, of course, be subject to the provision meant for cases where a certain proportion of the hire-purchase price has been paid.¹

Clause 18

General.—This is intended to prevent oppressive exercise by the owner of the power to seize the goods where there is a default in the payment of instalments.

Section 11 of the English Act provides that where instalments amounting to one-third of the hire-purchase price have been paid by the hirer, the owner cannot himself seize the goods and must file a suit to enforce his right. The English Act, however, is limited to hire-purchase agreements upto a certain value only, and there is no such restriction there for hire-purchase agreements where the hire-purchase price exceeds £ 300 (or £ 1000 in the case of livestock).

The comments received and the opinions expressed in the course of oral evidence recorded on this clause reveal a sharp difference of opinion as to the expediency of this provision. In the draft which was circulated by the Commission to the State Governments, High Courts, interested bodies and persons, the provision suggested was that where one-third of the hire-purchase price has been paid, the extra-judicial recovery of the goods should be barred. In the comments received on this clause, at one extreme stood the view that the proportion given in the draft was fair and at the other extreme stood the view that the hire purchase business in India was in its infancy and any restriction on the seizure of the goods by the owner would hamper the recovery of the goods and would discourage owners from giving out goods on hire-purchase. The point made was, that while the owners did not actually in practice use this right of seizure, the apprehension that it may be used constituted a very valuable sanction for the punctual payment of instalments. As between these two extremes, a number of intermediate proportions were suggested, for example, one-half, two-thirds, three-fourths, etc. of the hire-purchase price. The Commission appreciated that the right to seize goods constituted a useful safeguard for the

¹See clause 18.

owner's interest; at the same time, it must be noted that the goods given out on hire-purchase very often constitute the main source of livelihood of the hirer, and to leave the owner free to deprive the hirer of the possession of such goods without going to Court would cause serious hardship to the hirer.

Having regard to the fact that the main opposition to the proportion of one-third came from business interests concerned with motor-vehicles, particularly trucks and lorries, in respect of which the hire-purchase price would usually exceed Rs. 15,000, it appeared that the best solution was to fix the proportion at one-half for goods below Rs. 15,000 and three-fourths in other cases.¹

Sub-clause (1).—This does not need any further comments than those made under 'general' above.

Sub-clause (2).—In the opening portion, the article "the" seems to be more appropriate than the article "an" used in the English Act, and has been preferred.

Sub-clause (3).—Proceedings by way of suit for recovery of goods take a long time. As the clause under discussion imposes a restriction on extra-judicial seizure, it is considered that the proceedings should be by way of petition, so that the matter may be disposed of quickly and without much expense to the parties. Proceedings by way of suit take time and that must necessarily result in prejudice both to the owner and to the hirer. The owner suffers, because he does not get the goods, which may deteriorate in the meantime by the hirer's carelessness and indifference, while the hirer's interests are prejudiced because if the owner obtains from the court an order for the appointment of receiver or similar order, he loses the benefit of enjoyment of the goods, which may be his only source of livelihood.

Clause 19

Sections 12 to 16 of the English Act contain elaborate provisions as to the procedure to be followed by a court when the owner files a suit against the hirer for recovery of the goods on termination of the agreement for default in payment. These provisions are too complicated and cumbersome for Indian conditions. Instead, a simple provision has been proposed in the draft, giving power to the court to grant relief against forfeiture in such cases. Section 114 of the Transfer of Property Act has been taken as a model.

It has been considered proper to add that the hirer must also comply with such conditions as the Court may think fit to impose. (The conditions may be in the shape of security for future instalments or any other provision. That need not be specified).

¹See also the body of the Report, paragraph 6.

Clause 20

This is intended to afford the hirer relief against termination for the breach of express conditions (other than those relating to payment of hire) or for unauthorised act. It has been modelled, generally, on section 114A of the Transfer of Property Act, after omitting certain portions which do not fit in with the scheme of the Bill.

In sub-clause (2), instead of "reasonable time" allowed by the Transfer of Property Act, a definite period of two weeks has been specified, since there is no harm if, looking to the nature of the transactions to which the Act will apply, a period is specified.

Clause 21

Sub-clause (1)(a) is not found in the English Act and is intended to give the *hirer* a copy of the agreement, free of cost, as soon as the agreement is executed.

Sub-clause (1)(b) is also not found in the English Act and is intended to give the *surety* a right to obtain a copy of agreement at any time, *on demand made*. These will be particularly useful in cases where the surety has not retained a copy with him at the time when he signed the guarantee.

Sub-clause (2) follows section 6 of the English Act. The period has been put as 14 days, as in section 7 of the English Act.

Sub-clause (3) also follows the English Act.

Clause 22

This follows section 21(2) of the English Act. Its proper place, it is felt, is not in the interpretation clause, but under "Miscellaneous".

Clause 23

This deals with insolvency of the hirer and the consequences that flow from that. The question is fully discussed in the body of the Report.¹

Clause 24

The problem of successive hire-purchase agreements entered into by the same hirer with the same owner has been dealt with here. It happens often that goods X are hired under one agreement, and subsequently, while hiring goods Z from the same owner, the hirer is made to agree to a term under which goods X will also be subject to the obligations created by the subsequent agreement. This may sometimes affect prejudicially any right which the hirer would otherwise

¹See body of the Report, para 8 *et seq.*

acquire on payment of a certain proportion.¹ The clause provides that any such modification of the rights, etc. of the hirer under the first agreement would not be effective.

The present clause deals generally with successive agreements. The specific question of appropriation of payments has been dealt with in a separate clause.²

It may be noted that the clause as drafted is different from section 15 of the (English) Hire-Purchase Act, 1938, on the following points:—

(i) Under the English Act, the protection operates only if one-third of the hire-purchase price has already been paid and thereafter, the further agreement is made. Under the clause under discussion, on the other hand, this condition is not necessary. The clause under discussion will, therefore, operate irrespective of the point of time when the subsequent agreement is made.

(ii) The English Act, in relation to the further hire-purchase agreement, uses the words “comprising *those* goods.” Under the clause under discussion, the subsequent hire-purchase agreement has been described as “relating to other goods”, since usually it is in the guise of an agreement covering other goods (whether along-with the original goods or otherwise) that attempts are made to prejudice the rights of the hirer.

(iii) In the English Act, the words used are “the provisions of section shall have effect in relation to that further agreement as from the commencement thereof”. The clause under discussion is more clear, by specifically providing that any right which the hirer would otherwise have had will not be prejudiced by the further agreement.

Clause 25

This follows the English Act. The word “petition” is added to deal with the petitions under the Bill.³

Clause 26

This follows the English Act.

Clause 27

The object is to make an elaborate provision as to the mode of serving notices under the Act. In the comments received on the draft report when it was circulated, requests were made for the insertion of such

¹See clause 18.

²See clause 10.

³See clause 18.

a provision because in many cases, the hirer, it was said, would be moving about and personal service might be difficult. It is considered that if service by post is allowed, that will be sufficient.

Clause 28

Section 20 of the English Act contains elaborate provisions as to which section of the Act will apply to agreements entered into before the Act and which not. The conditions in this country do not require that any of the provisions of this Bill should retrospectively apply to agreements entered into before this Bill. The clause makes this clear.



APPENDIX III

LIST OF WITNESSES EXAMINED BY THE COMMISSION.

New Delhi (14th and 15th October, 1960).

Witness No.	Name of witness
1	2
1.	Shri Champakesa Iyengar Shri G. H. Raman
	} Representing the Sundaram Finance Private, Ltd., Madras.
2.	Shri Ved Prakash Shri B. K. Bedi
	} Representing the Upper India Hire-Purchase Companies As- sociation Ltd., New Delhi.
3.	Shri S. S. More Shri Thakur Jaswant Singh
	} Representing The Bombay Transport Financiers Associa- tion, Bombay.



APPENDIX IV

RECOMMENDATIONS IN RESPECT OF OTHER ACTS.

(i) *Insolvency Acts.*

A provision may be inserted in the **Insolvency Acts** to the effect that goods taken on hire-purchase are not subject to the doctrine of reputed ownership.¹



¹See the body of the Report, para 10.